

Entered on Docket  
February 23, 2006  
GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



Signed: February 22, 2006

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EDWARD D. JELLEN  
U.S. Bankruptcy Judge

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12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 In re No. 05-40370 J7  
15 WOOSUNG LEE, Adv. No. 05-4204

16 Debtor. /

17 HUEY-CHIANG LIOU,

18 Plaintiff,

19 vs.

20 WOOSUNG LEE,

Defendant. /

21 MEMORANDUM DECISION

22 This is an adversary proceeding in which plaintiff Huey-Chiang  
23 Liou ("Liou"), seeks to bar the discharge of defendant Woosung Lee,  
24 the above debtor ("Lee"), pursuant to Bankruptcy Code §727(a)(4)  
25 (false oath or account in connection with a bankruptcy case). Liou  
26 also seeks a nondischargeable judgment in the sum of \$15,225 against  
Lee pursuant to Bankruptcy Code §523(a)(2)(A) (debt obtained by

Memorandum Decision

1 false pretenses or fraud). The court, having heard the testimony of  
2 the witnesses and the other evidence presented, will issue its  
3 judgment in favor of Lee.

4 A. Facts

5 The genesis of this adversary proceeding is a pre-petition  
6 landlord-tenant relationship between Liou and Lee. On or about  
7 May 6, 2003, Liou and Lee entered into a Residential Lease-Rental  
8 Agreement for the real property located at 2371 Marion Avenue,  
9 Fremont, CA ("Property"), whereby Lee agreed to rent the Property  
10 from Liou at a monthly rate of \$2,000 ("Lease"). At the time, the  
11 parties agreed that Lee would be allowed to pay a portion of the May  
12 2003 rent, with the remainder to be paid between June and August  
13 2003. Exhibit 1, Lease at page 3. At trial, Liou testified that  
14 this term was agreed to because Lee stated that he was then  
15 unemployed but anticipated becoming employed shortly.<sup>1</sup> The parties  
16 further orally agreed to amend section nine of the Lease and allow  
17 Lee to sub-lease the Property.<sup>2</sup>

18 Lee subsequently defaulted under the Lease. After entering  
19 into, and defaulting under, several written agreements to cure  
20 accrued rents, Lee and his son moved out of the Property on  
21 August 7, 2004. Liou asserts that he is owed \$15,225 in unpaid  
22 rents and that this debt is nondischargeable.

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24  
25 <sup>1</sup>Testimony by Liou at trial.

26 <sup>2</sup>*Id.*

1       On January 28, 2005, Lee commenced this chapter 7 bankruptcy  
2 case (the "Petition Date"). John Kendall is the appointed chapter 7  
3 trustee ("Trustee"). On March 1, 2005, the initial section 341  
4 meeting of creditors was held. On March 29, 2005, the continued  
5 meeting of creditors was held and concluded.

6       Liou subsequently commenced this adversary proceeding.

7       B. Discussion

8       Section 727(a)(4)<sup>3</sup>

9       Denial of a debtor's discharge under section 727(a)(4)(A)  
10 requires proof, by a preponderance of the evidence, that: (1) the  
11 debtor knowingly and fraudulently made a false statement; and  
12 (2) the false statement related to a material fact. In re Aubrey,  
13 11 B.R. 268, 274 (9<sup>th</sup> Cir. BAP 1990). Included are material false  
14 statements in, or omissions from, the debtor's schedules, In re  
15 Wills, 243 B.R. 58, 62 (9<sup>th</sup> Cir. BAP 1999), made with the actual  
16 intent to defraud. In re Adeeb, 787 F.2d 139, 1342 (9<sup>th</sup> Cir. 1986).

17       The purpose of section 727(a)(4) is to ensure that the  
18 bankruptcy trustee and creditors have accurate information that  
19 would enable them to understand the debtor's financial affairs  
20 without the need to conduct costly investigations. Aubrey, 111 B.R.  
21 at 274. However, section 727 is to be construed liberally in favor  
22  
23

24       

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<sup>3</sup>Bankruptcy Code § 727(a)(4)(A) provides: "The court shall  
25 grant the debtor a discharge, unless - . . . (4) the debtor  
26 knowingly and fraudulently, in or in connection with the case-  
(A) made a false oath or account.

1 of debtors and strictly against the creditor. In re Mereshian, 200  
2 B.R. 342, 347 (9<sup>th</sup> Cir. BAP 1996), citing Adeeb, 787 F.2d at 1342.

3 Here, Liou argues that Lee should be denied his discharge  
4 because Lee made various false statements under oath during the  
5 meeting of creditors and on his schedules and Statement of Financial  
6 Affairs. Specifically, Liou asserts that between the Petition Date  
7 and the section 341 meeting of creditors, Lee made certain deposits<sup>4</sup>  
8 and transfers<sup>5</sup> of cash that he failed to disclose at the meeting of  
9 creditors and/or failed to disclose in his schedules.

10 The evidence at trial did not support many of Liou's  
11 allegations. As to those that were supported, they were not  
12 material to the point that denial of Lee's discharge is justified.

13 With reference to Lee's schedules and Statement of Financial  
14 Affairs, Lee testified that the transfers of which Liou complained  
15 were post-petition, and thus, that he was not obliged to disclose  
16 them in his Statement of Financial Affairs. See Official Form F,  
17 Statement of Financial Affairs, No. 7 (calling for transfers during  
18 the one year immediately preceding the filing of the petition).  
19 Liou submitted no contrary evidence.

20  
21  
22 <sup>4</sup>Liou submitted evidence showing that between the Petition  
23 Date and the meet of creditors (2/3/05 to 3/3/05), Lee made  
24 deposits to his Bank of America bank account in the total amount  
of \$4,609.55.

25 <sup>5</sup>Liou proffered evidence that Lee made two cash transfers in  
26 the amount of \$2,000 and \$1,000 to "V V Asset Management" on  
2/3/05 and 3/3/05, respectively.

1       As to his testimony at the meeting of creditors, Lee testified  
2 at trial that he did disclose the transfers as best he could recall.  
3 Although Lee may have been less than candid, and not fully accurate,  
4 the court cannot say that the inaccuracies were material. See In re  
5 Mereshian, 200 B.R. 342, 346 (9<sup>th</sup> Cir. BAP 1996)(a court may consider  
6 the fact that an asset has little value as a factor in its  
7 determination of a debtor's intent under section 727(a)(4)).  
8 Moreover, to the extent that Lee omitted disclosure of postpetition  
9 assets or transactions, they did not involve property of the estate.  
10 In In re Wills, the court stated "omissions or misstatements  
11 concerning property that would not be property of the estate may not  
12 meet the materiality requirements of section 727(a)(4)(A)." Wills,  
13 243 B.R. at 63, citing In re Swanson, 36 B.R. 99 (9<sup>th</sup> Cir. BAP 1984).  
14 In Wills, the court also said "A false statement or omission that  
15 has no impact on a bankruptcy case is not grounds for denial of  
16 discharge under section 727(a)(4)(A)." Id.

17       Furthermore, the sums Liou alleges Lee failed to disclose could  
18 have been claimed as exempt from the estate even if they were pre-  
19 petition assets. Again, materiality is questionable.<sup>6</sup>

20       The court holds that section 727(a)(4) does not bar Lee from  
21 obtaining his discharge herein.

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23       <sup>6</sup>In his Schedule C, Lee claimed California State exemptions  
24 under CCP §703.140(b)(1)-(5) as follows: \$40.00 in cash; \$1,000  
25 in household goods and furnishings; \$14,000 for a 2003 Toyota  
26 Camry. There thus remained a total of \$6,535 in available  
unclaimed exemptions.

1                   Section 523(a)(2)(A)

2                   Liou argues that Lee's debt for rent is nondischargeable under  
3 section 523(a)(2)(A). To prevail under § 523(a)(2)(A), a creditor  
4 must establish that: (1) the debtor made a representation, (2) with  
5 knowledge of its falsity, (3) with the intention and purpose of  
6 deceiving the creditor, (4) that the creditor justifiably relied on  
7 the representation, and (5) that the creditor sustained damage as  
8 the proximate result thereof. In re Kirsh, 973 F.2d 1454, 1457 (9th  
9 Cir. 1992); In re Britton, 950 F.2d 602, 604 (9th Cir. 1991). The  
10 creditor must establish each of these elements by a preponderance of  
11 the evidence. Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654 (1991).

12                  Here, Liou has failed to establish the requisite elements.  
13 There was no evidence presented that showed that Lee entered into  
14 the Lease with Liou without intending to perform. With reference to  
15 the justifiable reliance requirement, Liou was aware of Lee's  
16 precarious financial condition when he agreed to allow Lee to let  
17 the premises, and thereafter when he agreed to the extensions.

18                  Liou argues that the fact that Lee used certain sublease rent  
19 for his own purposes shows that his conduct was fraudulent, but  
20 failed to show at trial how or why this was so. In fact, Liou  
21 expressly authorized Lee to enter into a sublease.

22                  Lee argues that Liou wrote him some checks that failed to  
23 clear, and thereby obtained more time to stay in the premises. This  
24 argument fails because Liou presented no evidence that Lee knew the  
25 checks would not clear.

1 Liou also argues that Lee had promised him that he would make  
2 up the past due rent from various other sources (e.g., a tax  
3 refund). The court holds that any reliance by Liou on any such  
4 representations was not justifiable. If made, such representations  
5 came after the date of the alleged bounced checks, after Lee told  
6 Liou he was out of work, and after Liou had served Lee with a notice  
7 to quit the premises.

8        The court holds that Liou's claims under section 523(a)(2)(A)  
9 fail.

### 0 C. Conclusion

1 For the foregoing reasons, the court will issue its judgment in  
2 favor of Lee.

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